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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JEFFREY EMON BANKS,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

CASE NO. C16-0909JLR

MINUTE ORDER DIRECTING
SUPPLEMENTAL BRIEFING

15 The following minute order is made by the direction of the court, the Honorable
16 James L. Robart:

17 Jeffrey Emon Banks petitions to vacate, set aside, or correct his sentence under 28
18 U.S.C. § 2255 for ineffective assistance of counsel. (Mot. (Dkt. # 1).) Mr. Banks's
19 ineffective assistance of counsel claim rests primarily on his trial counsel's failure to
20 argue that Mr. Banks's sentence was impermissibly enhanced under the United States
21 Sentencing Guidelines (the "Guidelines"), U.S.S.G. § 2k2.1(a)(4), based on Mr. Banks's
22 prior conviction for second-degree robbery in Washington State. (Mot. (Dkt. # 1).) The

1 court has held that the recent Supreme Court decision, *Johnson v. United States*,
2 ---U.S.---, 135 S. Ct. 2551 (2015), applies to invalidate the Guidelines' residual clause
3 and applies retroactively. *Lilley v. United States*, No. C16-0410JLR, 2016 WL 6997037,
4 at *7 (W.D. Wash. Nov. 30, 2016); *Carpio v. United States*, No. C16-0647JLR, 2016 WL
5 6395192, at *3 (W.D. Wash. Oct. 28, 2016). In addition, the court has held that
6 Washington second-degree robbery was a sentence-enhancing predicate felony only by
7 reference to the now-invalidated residual clause of the Guidelines. *See Lilley*, 2016 WL
8 6997037, at *17-20.

9 The court directs the parties to file simultaneous supplemental briefing on two
10 questions: (1) whether, in addition to stating an ineffective assistance of counsel claim,
11 Mr. Banks's petition also makes a claim for habeas relief pursuant to *Johnson*, and (2) the
12 merits of a substantive *Johnson* claim in Mr. Banks's case. The parties' supplemental
13 briefing is due no later than Wednesday, March 8, 2017, and each party's supplemental
14 brief is limited to twelve (12) pages. Neither party is permitted to file a response or other
15 briefing unless the court orders otherwise.

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17 Filed and entered this 21st day of February, 2017.

18 WILLIAM M. MCCOOL
19 Clerk of Court

20 s/ Ashleigh Drecktrah
21 Deputy Clerk
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